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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,881	08/18/2003	Mark Bader	EMP 0120 PUS2	3319

22045 7590 08/24/2004

BROOKS KUSHMAN P.C.  
1000 TOWN CENTER  
TWENTY-SECOND FLOOR  
SOUTHFIELD, MI 48075

EXAMINER

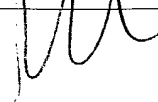
SAYOC, EMMANUEL

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/642,881	Applicant(s) BADER ET AL. 	
	Examiner Emmanuel Sayoc	Art Unit 3746	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-15 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/15/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn Figures 1-14 , a fluid pump, classified in class 417/, subclass 366.
  - II. Claim 10-15, drawn to a method of manufacturing an encapsulated stator assembly, classified in class 29, subclass 732.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II. and I. are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the manufacturing of the product need not involve the step of temporarily capping the two open ends and encapsulating the stator assembly. The stator may be encapsulated outside from the metal case. Also the method can be used to make a stator for a motor operated drive machine as opposed to a pump.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. Because these inventions are distinct for the reasons given above and the search required for Group II. is not required for Group I., restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Marc Malooley on 8/18/2004 a provisional election was made without traverse to prosecute the invention of Group I., claims 1-9.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 10-15 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Specification***

7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should refer to at least the principle inventive concept of the claimed invention.

### ***Drawings***

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the inlet diffuser vanes

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formed on the front cover, must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 6, and 7 of U.S. Patent No. U.S. 6,659,737 B2 in view of Harlamoff U.S. 2,520,880.

The limitations of claim 1, particularly the details of the stator housing assembly, the impeller, and the rotor assembly are covered in claim 1 of the U.S. Patent No. U.S. 6,659,737 B2. The difference lies in that the current application claims a motor housing assembly having an inlet housing, a stator housing assembly, and an outlet housing. Harlamoff in Figure 1, teaches that it was well known in the art at the time the invention was made to make a pump housing with modular sections for ease in manufacture and assembly. The pump includes an inlet housing (2), a stator housing assembly (1), and an outlet housing (3). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the U.S. Patent No. U.S. 6,659,737 B2 by incorporating the three part modular housing, as taught by Harlamoff, for ease in manufacture and assembly. The difference between the current invention and U.S. Patent No. U.S. 6,659,737 B2 is an obvious and a non-critical variation of the patented invention.

With respect to claim 2, the inlet housing and the outlet housing are fastened together to secure the stator housing assembly therebetween.

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With respect to claim 3, a further difference between the claimed invention and U.S. Patent No. U.S. 6,659,737 B2 lies in that the current application claims a stator metal case including liquid flow passages formed therein by diffuser vanes and inner and outer walls of the metal case, thereby completely defining the liquid flow passages. Harlamoff in Figure 3, teaches that it was well known in the art at the time the invention was made to incorporate fluid passages (24, 25, 26, and 27) within a stator housing to assist in cooling the pump and pump housing (see column 3 lines 27). The passages are completely defined by an inner wall (28), an outer wall (1), and a plurality of radial walls (shown not enumerated) constituting diffuser vanes. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the U.S. Patent No. U.S. 6,659,737 B2 by incorporating the stator housing defined fluid passages with diffuser vanes, as taught by Harlamoff, for assisting in cooling the pump and the housing. The difference between the current invention and U.S. Patent No. U.S. 6,659,737 B2 is an obvious and a non-critical variation of the patented invention.

Claim 4 is identical to claim 2 of U.S. Patent No. U.S. 6,659,737 B2.

With respect to claim 5, the limitations outlined in claim 1 of U.S. Patent No. U.S. 6,659,737 B2 shows that it is obvious that the stator housing assembly includes a front cover and a rear cover plugging opposing ends of the rotor cavity, whether they are integral to the cavity or separate components.

With respect to claim 6, a further difference between the claimed invention and U.S. Patent No. U.S. 6,659,737 B2 lies in that the current application claims inlet diffuser vanes formed on the front cover. Harlamoff in Figure 1, teaches that it was well known in the art at the time the invention was made to incorporate inlet diffuser vanes (blades

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11, or web vanes 8) formed on the front cover. The vanes help ensure laminar flow. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the U.S. Patent No. U.S. 6,659,737 B2 by incorporating the inlet diffuser vanes on the front cover, as taught by Harlamoff, for ensuring linear, non-turbulent fluid flow. The difference between the current invention and U.S. Patent No. U.S. 6,659,737 B2 is an obvious and a non-critical variation of the patented invention.

Claims 7 and 8 have the same structure as claims 6 and 7, respectively, of U.S. Patent No. U.S. 6,659,737 B2.

11. Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. U.S. 6,659,737 B2 in view of Harlamoff U.S. 2,520,880, as applied to claims 1, 5, 7, and 8, and in further view of Moriya et al. (U.S. 5,401,146).

With respect to claim 9, a further difference between the claimed invention and U.S. Patent No. U.S. 6,659,737 B2 lies in that the current application claims a rear cover containing a bearing seat for locating the rear bearing. Moriya et al. in Figure 11, teaches an analogous pump with a sealed rotor cavity, a front cover (25), and a rear cover (37a). The reference teaches that it was well known that the rear cover (37a) contains a bearing seat (shown not enumerated) for locating the rear bearing (33). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the U.S. Patent No. U.S. 6,659,737 B2 by incorporating the rear cover containing a bearing seat for locating the rear bearing, as taught by Moriya et al., in order to rotatably support the shaft, without obstructing any fluid passages. The difference



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between the current invention and U.S. Patent No. U.S. 6,659,737 B2 is an obvious and a non-critical variation of the patented invention.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to further show the state of the art with respect to centrifugal pumps.

U.S. Pat. 6,364,013 B1 to Watson et al.

U.S. Pat. 6,329,731 B1 to Arbanas et al.

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***Contact Information***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Sayoc whose telephone number is (703) 305-0054. The examiner can normally be reached on M-F 8 A.M. - 6 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (703) 308-2675. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Emmanuel Sayoc  
Examiner  
Art Unit 3746

ECS



**JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**

8/23/04